# IN THE QUEEN'S BENCH,

## APPEAL SIDE.

**AARON A. ADAMS,**

**Appellant,**

and

**The SCHOOL COMMISSIONERS for the Municipality of Barnston.**

**Respondents.**

## RESPONDENTS' CASE.

*Fyled* *August*, 1860.

**RITCHIE & BORLASE,**
Attorneys for Respondent.

Montreal

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# IN THE COURT OF QUEEN'S BENCH.

## APPEAL SIDE.

AARON A. ADAMS,

*(Plaintiff in the Court Below,)*

**Appellant,**

and

THE SCHOOL COMMISSIONERS FOR THE MUNICIPALITY OF BARNSTON,

*(Defendants in the Court Below,)*

**Respondents.**

## CASE OF THE RESPONDENTS.

The action of the Appellant, Plaintiff in the Court below, was brought in the Superior Court, at Sherbrooke, to recover from the Respondents the sum of £62 15s. with interest, from the 5th July, 1852, alleged to be due, in virtue of an obligation in writing, executed on that day in favor of the Appellant and one Humphrey, then his partner in business, by the then School Commissioners of the Municipality of Barnston, in the County of Stanstead—or a majority of them. The obligation purports to be "for the balance due the said Adams & Humphrey for the building of the Model School House at Barnston Corner, to wit: in the said Township of Barnston, under contract of the said parties," and is payable in three months after date; and for securing the payment, the Commissioners hypothecated certain property described in the obligation; being, in fact, the Model School House itself, and the land upon which it is erected. The Appellant further alleged that on the 23rd April, 1857, Humphrey assigned to him his interest in the above-mentioned mortgage and obligation. He further claimed a sum of $14.60, alleged to have been paid by him for insurance of the School House for the benefit of the Commissioners.

To this action the Respondents pleaded, first, a *defense au fonds en fait;* secondly, a perpetual exception by which they alleged in substance, that previous to the execution of the obligation declared upon, the then School Commissioners for the said Municipality, had levied by School rate or assessment, upon the Township of Barnston, the sum of £150 currency, for the erection of the said Model School House, and had also received from the Common School Fund, a like sum of £150, for the same purpose, amounting together to £300, which had been laid out in the erection of the School House, and had, in fact, been paid to the said Adams & Humphrey, for building it; that the School Commissioners were, by law, precluded from levying or expending any further sum for that purpose, and that the obligation entered into by them for the payment of the further sum of £62 15s was therefore null and inoperative to bind the Defendants.

Admissions of the facts were given on both sides, and on the 19th September, 1859, the following judgment was rendered by the Superior Court, viz:

"The Court, considering that the Defendants have established the allegations of "the exceptions by them pleaded, that the obligation in writing, entered into by Ezra "Aldrich, Moses Clough, William S. Oliver, and Mathew Jenks, as School Commission-"ers, was for the payment of a Model School House, and was in excess of £150, for "which sum only the Municipality could legally be assessed and compelled to pay, and "the same obligation was and is inoperative to bind the Defendants, doth maintain the "said exceptions; and further, considering that the Plaintiff hath failed to prove the al-"legations of his declaration for any other indebtedness by the Defendants to him than "$14.60, for money, paid by him for their benefit, doth adjudge and condemn the De-"fendants to pay the Plaintiff $14.60, with interest thereon from 27th December, 1858, "and costs of suit; and doth dismiss the remainder of the Plaintiff's demand, and doth "grant distraction of costs to Messrs. Sanborn & Brooks, the Plaintiff's attorneys.

It is from this judgment that the present Appeal has been instituted.

By the 9th Vic. c. 27 § XXI., it is enacted "that it shall be the duty of the School "Commissioners in each Municipality * * * * Thirdly, to do whatever it may be "expedient to do with regard to building, repairing, keeping in order, or renewing all "School Houses, lands, fences, and movable property, which shall be held by them, or to

"hire temporarily, or accept the gratuitous use of Houses and other buildings, fo
"purpose of keeping Schools therein, *Provided that no rate shall be levied for the bu*
"*of a Superior or Model School, to exceed the sum of one hundred and fifty pounds*, n
"a Common School to exceed the sum of seventy-five pounds." Section XXIV
vides "That no such Corporation" (viz: the School Commissioners for any Munic
"ity,) "shall alienate any portion of the property held by it without the expres
"thority of the Superintendent of Schools."

The School Commissioners, having expended the sum allowed them from the C
mon School Fund, and the £150, levied by assessment upon the Municipality,
which was the only sum which the Municipality could be legally called upon to
for the erection of a Model School, manifestly exceeded their powers, in entering
the agreement with Adams & Humphrey for the payment of the further sum of
15s, and the Municipality cannot be bound by a contract, entered into by them in
ance of the express provision of the law. They would otherwise be enabled indirec
to bind the Municipality for the payment of a sum which they could not levy upo
by a direct assessment, and the object of the law, viz: the restraining of extr
gance in the erection of buildings for school purposes, would be defeated. The ass
ment from Humphrey to Adams is informal, and insufficient to enable the Appell
to maintain the present action in his own name. This point was raised in the Co
below, and a rehearing of the cause had upon it, and was mentioned by the lear
Judge in the Court below, as one of the grounds of his judgment, though it does
appear in the judgment, as now formally motivé.

The Respondents respectfully submit that the judgment of the Court below m
be confirmed.

RITCHIE & BORLASE,
Attorneys for Respondents

Montreal, August, 1860.

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